REVIEWS AND CRITICISMS

THE PROBLEM OF PROOF ESPECIALLY AS EXEMPLIFIED IN DISPUTED DOCUMENT TRIALS. By *Albert S. Osborn.* Albany: Matthew Bender & Co., 1922. Pp. 526.

The subject of expert testimony in court trials has been the theme of much controversy. Opinions of all kinds of witnesses on all sorts of matters are given in evidence without exciting any remark, but when the subject matter as to which the opinion is offered is of such a nature that special study or experience is necessary to the formation of an opinion which therefore can only be given by an expert the valuation of such opinions is naturally a matter of great difficulty. The writer has long held the view that one of the main points of difficulty with regard to the presentation of expert testimony both of fact and opinion is the fact that too frequently the examiner is ignorant of the subject matter of the testimony and does not deem it necessary to inform himself upon it. He therefore is not prepared to do his part toward the effective presentation of the testimony in direct examination by a proper series of questions nor to test the testimony given by the witness by efficient cross-examination.

Some years ago in his book on "Questioned Documents" Mr. Osborn furnished a concise but at the same time comprehensive text book on the subject matter of his special field. In the work now under review he covers the whole field of the presentation of the evidence of expert witnesses though with especial reference, of course, to the field of disputed documents. Mr. Osborn's long experience as an expert witness has yielded a fund of observations on the methods of the presentation of evidence which is both acute and illuminating and if carefully read and digested cannot but prove of great value to every trial lawyer. The chapter on "Preparation on the Facts," is a simple and clear elucidation of proper methods of investigating and preparing the facts of a case for trial. Not less illuminating is the chapter on "Sifting the Evidence." The trial attorney learns by long experience the things pointed out in these chapters, but greater attention to them by all practitioners would greatly improve the standards of the trial of cases. Of especial value to lawyers are the chapters on cross-examination and advocacy. The fact that the author is not a lawyer lends a peculiar value both to his criticism and advice for his view-point is from outside the legal profession and at the same time his long, practical experience in trials renders it intelligent and appreciative of the elements involved.

Other chapters, such as that on "Obtaining Standards of Comparison" and that on "Photographs in Disputed Document Cases" relate more to the author's own specialty and he has recorded his reflections on more general phases of the subject in chapters such as that on "The Atmosphere of a Trial" and that on "The Designing and Lighting of Court Rooms."

It is not only to the lawyer but to the expert as well that the author offers his criticism and advice and the book will be of value to those who have occasion to act as witnesses on technical and scientific subjects. In the chapter on "Uninformed Expert Witnesses" is a direct and fearless discussion of the unqualified and the lying expert and the disreputable attorney who knowingly procures him to testify. "The uninformed and inexperienced are sometimes prevailed upon to appear as alleged expert witnesses without fully realizing what they are doing; the corrupt, who sometimes are technically qualified, are simply employed to defeat justice. It cannot be too plainly and bluntly said that there are these witnesses who for pay can thus be hired to lie in court and it cannot be too plainly and bluntly said that there are lawyers who deliberately hire and pay them to lie." The author discusses some of the methods suggested for the regulation of expert testimony such as limiting the compensation of experts, selection of expert witnesses by the court and providing a jury of experts. He does not find any of these proposals acceptable. "The restrictions in some of the proposed changes would make it difficult to get any self-respecting specialist to appear in court. . . . A court room should be made more attractive to honest and competent technical men who can assist in proving facts and, at the same time, should, if possible, be made a more uncomfortable place for the charlatan who is there to defeat justice. . . . The charlatan and his conscienceless employer, under most of these proposed changes, would no doubt continue to act while the work of the capable specialist, whose conscientious and skillful efforts are not differentiated from the work of the charlatan, would be diminished and weakened if not ended altogether." As to the official expert proposal he says: "Most thorough students of the conditions and subject agree that this official designation of the exclusive witness is dangerous and undesirable." All this seems to be plain common sense, but it needs to be said and cannot be too frequently reiterated, for, as the author states, "there has been much ill-considered discussion of these various phases of the subject." In his view "no doubt the most effective reform or improvement in the use of expert testimony will eventually come through the presiding judge. Like many other reforms, however, they must perhaps await that day when all judges are appointed and confirmed by two-thirds vote of senates or other reviewing bodies; when they are given back the power taken from them, and the judicial office is everywhere given the dignity and honor it deserves."

It is frequently argued that expert testimony is of little weight because it is often conflicting. This overlooks the plain fact that evidence of any sort in a trial is generally more or less in conflict; otherwise there would probably be no trial. As to this point the author well says: "The vital question with expert, as with other testimony, is not whether it has been conflicting, but whether it is true and convincing. Conflicts in testimony that cannot be reviewed in any way by the trier of the fact or the reviewer of the fact may, of course, nullify all the testimony and defeat the ends of justice, but the fallacy as suggested, is to assume that this is true of all conflicts. When con-

flict is specifically brought about for the sole purpose of making the argument that all testimony on the subject is therefore nullified and the judge or referee or reviewing court takes this same view, then perjury and stupidity has accomplished their intended purpose and have succeeded in defeating the ends of justice."

The reader may very likely not agree with all of Mr. Osborn's contentions and naturally not all of the discussions are of equal value, but it is safe to say that no trial attorney or prospective technical witness can read the book without being well repaid for the time employed and it is beyond doubt that the author has accomplished what he states to be the main purpose of the book—"to help the lawyer who has a case to try in which it becomes necessary to prove the facts relating to a disputed document."

Warren, Pa. EDWARD LINDSEY.

THE PUBLIC CONSCIENCE. By *George Clarke Cox*. New York, 1922. Henry Holt & Co. Pp. vii + 477.

This book provides us, as Professor Cabot remarks in his introduction, with something new in ethics. It is an attempt to study moral conduct by the "case method," as this is employed in law and medicine. More strictly, the book presents an *opportunity* to study ethics by the case method. The book provides the cases. These are drawn entirely from the legal field. It is a record of offenses charged and legal decisions actually made. As such it reveals the "public conscience" as this has been expressed in public judgments.

Mr. Cox is strongly of the opinion that the study of ethics can only be advanced by the "descriptive method"; by a painstaking observation and tabulation and analysis of moral judgments as these are actually made by men. Legal decisions furnish us with a great mass of data to work upon. The present collection of cases had to do with such topics as murder, burglary, breaches of trust, carrying concealed weapons, Sunday laws, right of assembly trust regulation. These instances are selected at random. Mr. Cox presents his material to be sure, in a logical order, although the order has no special ethical significance.

The reviewer feel that any brief criticism of Mr. Cox's venture would be worse than useless. It seems that we are to repeat here, as in so many of the social sciences, the attempt to arrive at conclusions through the "purely descriptive" method of research. It is possible that this method has been over-played. No doubt many, however, will welcome what seems like a serious effort to bring ethics, still under bondage to philosophy, into the status of a really empirical "science." They will welcome Mr. Cox's contribution as a desirable addition, also, to the teacher's stock in trade. All who are of this faith will doubtless recognize, with Mr. Cox, that the legal material presented in this book has its limitations. Most obviously, perhaps, in the respect that the cases of conduct presented are elemental and show no subtlety in the moral situation; and, again, in the respect that we here consider only cases of reprehensible conduct and never instances of praiseworthy